

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 18-cr-00408-BMC-4
: :
: :
- versus - : U.S. Courthouse
: Brooklyn, New York
: :
HUANG, et al., : September 5, 2019
Defendant : 4:12 PM
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE

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Proceedings

1 THE CLERK: Criminal Cause for a Plea Hearing,
2 case number 18-cr-408, United States of America v. Huang,
3 et al, defendant number 4, Wei Mei Gao, and defendant
4 number 5, Seng Miao Xia.

5 Counsel, please state your name for the record,
6 beginning with the government.

7 MR. CAMPOS: For the United States, William
8 Capos, and trial attorney, James Yoon, from the computer
9 crime, and intellectual property section of the
10 Department of Justice.

11 Good afternoon, your Honor.

12 THE COURT: Good afternoon.

13 MR. SHEINBERG: And it's Michael Sheinberg, 50
14 Court Street, Brooklyn, New York. I represent Mr. Xia,
15 X-I-A.

16 Good afternoon.

17 THE COURT: Good afternoon.

18 MS. VAN MALDEN: Good afternoon, your Honor.
19 Stacey Van Malden on behalf of Ms. Gao.

20 THE COURT: I see we have an interpreter
21 assisting the defendants. Please raise your right hand.
22 (INTERPRETER SWORN)

23 THE COURT: Please state your name for our
24 record.

25 THE INTERPRETER: Yes, my name is Nancy Wu, W-

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1 U.

2 Good afternoon, your Honor.

3 THE COURT: MS. Wu. And are you translating --

4 THE INTERPRETER: Ms. Wu.

5 THE COURT: Ms. Wu, I'm sorry. Are you

6 translating into Mandarin for us today?

7 THE INTERPRETER: Mandarin, yes.

8 THE COURT: Thank you.

9 THE INTERPRETER: Thank you.

10 Mr. Xia, are you understanding everything I am
11 saying as it's translated into Mandarin for you?

12 DEFENDANT XIA: Yes.

13 THE COURT: Ms. Gao, are you understanding
14 everything I am saying as it's translated into Mandarin
15 for you?

16 DEFENDANT GAO: Yes.

17 THE COURT: Mr. Sheinberg, I believe you're
18 retained in this case.

19 MR. SHEINBERG: Yes, I am, your Honor.

20 THE COURT: And Ms. Van Malden, you are as,
21 well?

22 MS. VAN MALDEN: Yes, your Honor.

23 THE COURT: Ms. Gao -- oh, before I do that, is
24 there any objection from any party to my proceeding with
25 both defendants simultaneously for purposes of this Rule

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1 11 proceeding.

2 Mr. Sheinberg?

3 MR. SHEINBERG: No objection, your Honor.

4 THE COURT: Ms. Van Malden?

5 MS. VAN MALDEN: No, your Honor.

6 THE COURT: Mr. Xia, Ms. Gao, the reason you
7 are in my courtroom today is that your lawyers have
8 indicated that you wish to surrender your right to a
9 trial, and instead plead guilty to Count 1 of the
10 indictment that is pending against you.

11 Before I may hear any plea of guilty that you
12 might choose to offer, I want to make sure that you
13 understand that I am not the judge who is presiding over
14 your case. The judge presiding over your case is
15 United States District Judge Cogan. Judge Cogan is the
16 judge who will decide whether any plea of guilty you
17 decide to offer should be accepted, and if so, what
18 sentence should be imposed.

19 I'm a magistrate judge. I'm not a district
20 judge like Judge Cogan. I do not have the authority
21 under the law to formally accept the guilty plea or to
22 decide your sentence.

23 If you wish, you have the absolute right to
24 present any plea of guilty you wish to make to Judge
25 Cogan. If you made the choice to do that, there would be

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1 no prejudice to you. You would be permitted to plead
2 guilty on the same terms and conditions that are being
3 offered to you now on another date that's convenient to
4 Judge Cogan.

5 In the alternative though, if I have your
6 consent and agreement, I do have the authority to be the
7 judge who hears your guilty plea. If you agree to
8 present your guilty plea to me, I will arrange for this
9 proceeding to be recorded and for the recording to be
10 transcribed or written out, so that Judge Cogan has a
11 record of what you and I have said to each other to
12 review before deciding whether to accept your guilty
13 plea, or how to determine your sentence.

14 Do you understand everything I have said so
15 far, Mr. Xia?

16 DEFENDANT XIA: Yes.

17 THE COURT: Ms. Gao?

18 DEFENDANT GAO: Yes.

19 THE COURT: Do you wish to give up your right
20 to have Judge Cogan hear your plea and do you agree to
21 proceed instead to me?

22 Mr. Xia?

23 DEFENDANT XIA: Yes.

24 THE COURT: Ms. Gao?

25 DEFENDANT XIA: Yes.

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1 THE COURT: Are you making this decision
2 voluntarily, of your own free will, and not in response
3 to any threats or promises?

4 Mr. Xia?

5 DEFENDANT XIA: Yes.

6 THE COURT: Ms. Gao? Yes?

7 DEFENDANT GAO: Yes.

8 THE COURT: Did you review a consent form that
9 looks like this carefully with your attorney, and then
10 agree to sign it?

11 Mr. Xia?

12 DEFENDANT XIA: Yes.

13 THE COURT: Ms. Gao?

14 DEFENDANT GAO: Yes.

15 THE COURT: Counsel, do you know of any reason
16 why your client should not consent to proceed before me
17 for these purposes?

18 Mr. Sheinberg?

19 MR. SHEINBERG: No, Judge.

20 THE COURT: Ms. Van Malden?

21 MS. VAN MALDEN: No, your Honor.

22 THE COURT: I find the consent of each
23 defendant knowing and voluntary, I am endorsing the form
24 with my signature and today's date to memorialize my
25 finding.

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1 Before we proceed further, I have a question
2 for the prosecution about the plea agreements. I see
3 that they are different than the ones that were submitted
4 to my chambers in anticipation of today's proceeding for
5 the Court's review in that the date by which the pleas
6 must be entered has been altered.

7 Are there any other amendments to the document?

8 MR. CAMPOS: There are no other changes, your
9 Honor.

10 THE COURT: In reviewing the document, I also
11 noticed that each defendant is to consent to entry of a
12 \$90,000 forfeiture judgment. I don't know if that's for
13 a specific fund, and it's one \$90,000 corpus that both
14 defendants are surrendering their interest to, or if
15 these are substitute assets, and each is independently
16 liable for a separate \$90,000 amount.

17 MR. CAMPOS: Each is independently liable for
18 \$90,000.

19 THE COURT: Thank you, Mr. Campos.

20 Mr. Xia, and Ms. Gao, before I may recommend
21 that Judge Cogan accept any guilty pleas you offer, I to
22 ask you a very long list of questions. The questions are
23 important ones. They're designed to make sure you
24 understand the consequences of the decision you are being
25 asked to make. They are also designed to protect the

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1 prosecution and the Court because they will create a
2 record that will show that I explained your rights to
3 you, you agreed to surrender your rights, knowing what
4 those rights were voluntarily.

5 Once that happens, any plea of guilty you make
6 will be legally valid, and permanently binding. So I
7 urge you to listen carefully to my questions. If I ask
8 something, and you are not sure you understand me, just
9 tell me, and I will try to ask it again and make it
10 clearer.

11 If you wish to stop at any point to ask me a
12 question, or speak privately with your lawyer, just tell
13 me that, and I will give you the opportunity.

14 Is that clear to you, Mr. Xia?

15 DEFENDANT XIA: Yeah.

16 THE COURT: Ms. Gao?

17 DEFENDANT GAO: Yes.

18 THE COURT: It's so important that you be
19 truthful, that I am going to ask my clerk to administer
20 an oath to you now. Please rise.

21 W E I M E I G A O,

22 having been first duly sworn, was examined and
23 testified as follows:

24 S H E N G M I A O X I A ,

25 having been first duly sworn, was examined and

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1 testified as follows:

2 THE COURT: You may be seated.

3 Now that you are sworn, when you answer my
4 questions, you are doing subject to the penalties of
5 perjury or making a false statement. That means that if
6 you lie to me today, new criminal charges could be
7 brought against you for it.

8 Do you understand me, Mr. Xia?

9 DEFENDANT XIA: Yes, I understand.

10 THE COURT: Ms. Gao?

11 DEFENDANT GAO: Yes.

12 THE COURT: Mr. Xia, state your full name.

13 DEFENDANT XIA: I speak in Chinese?

14 THE COURT: Yes.

15 DEFENDANT XIA: My last name is Xia, and my
16 name is Sheng Miao.

17 THE COURT: How old are you?

18 DEFENDANT XIA: 45-years-old.

19 THE COURT: How far did you go in school?

20 DEFENDANT XIA: I graduated from elementary
21 school.

22 THE COURT: How old were you when you stopped
23 going to school?

24 DEFENDANT XIA: I was fourteen, something like
25 that.

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1 THE COURT: Are you having any difficulty
2 understanding the translation from the interpreter of my
3 words?

4 DEFENDANT XIA: You mean in Chinese --

5 THE COURT: Yes.

6 DEFENDANT XIA: -- or in English?

7 THE COURT: Chinese.

8 DEFENDANT XIA: No problem. I understand
9 everything.

10 THE COURT: Does the interpreter sense any
11 difficulty communicating with this defendant?

12 THE INTERPRETER: No, your Honor.

13 THE COURT: Thank you.

14 Ms. Gao, tell me your full name?

15 DEFENDANT GAO: My last name is Gao. My name
16 is Wei Mei.

17 THE COURT: How old are you?

18 DEFENDANT GAO: 36.

19 THE COURT: How far did you go in school?

20 DEFENDANT GAO: High school.

21 THE COURT: Did you graduate?

22 DEFENDANT GAO: Yes.

23 THE COURT: Are you having any difficulty
24 understanding the translation from the interpreter?

25 DEFENDANT GAO: No.

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1 THE COURT: Does the interpreter sense any
2 difficulty communicating with this defendant?

3 THE INTERPRETER: No, your Honor.

4 THE COURT: Thank you.

5 Mr. Xia, are you now or have you in recent
6 months been seeing a doctor, psychologist or other
7 healthcare professional for any mental, physical or
8 emotional problems?

9 DEFENDANT XIA: No.

10 THE COURT: Ms. Gao, have you?

11 DEFENDANT GAO: No.

12 THE COURT: In the last 24 hours, have you
13 taken any narcotics, drugs, medicine, pills or alcohol?

14 Mr. Xia?

15 DEFENDANT XIA: No.

16 THE COURT: Ms. Gao?

17 DEFENDANT GAO: NO.

18 THE COURT: Have you ever in your life been
19 treated or hospitalized for drug or alcohol abuse, or
20 psychiatric problems?

21 Mr. Xia?

22 DEFENDANT XIA: No.

23 THE COURT: Ms. Gao?

24 DEFENDANT GAO: However, I was hospitalized for
25 my thyroid issue, but other than that, I have no other

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1 issue.

2 THE COURT: How long ago was that?

3 DEFENDANT GAO: I have two surgeries last year,
4 one was in July, the other one is in December.

5 THE COURT: That was not for a psychiatric
6 issue though, correct?

7 DEFENDANT GAO: No.

8 THE COURT: Is your mind clear today, and do
9 you understand everything that's go on so far?

10 Mr. Xia?

11 DEFENDANT XIA: Yes.

12 THE COURT: Ms. Gao?

13 DEFENDANT GAO: Yes.

14 THE COURT: Do you feel healthy, and focused,
15 and alert today?

16 Mr. Xia?

17 DEFENDANT XIA: Yes.

18 THE COURT: Ms. Gao?

19 DEFENDANT GAO: Yes.

20 Mr. Sheinberg, have you discussed the matter of
21 pleading guilty very carefully with your client?

22 MR. SHEINBERG: Yes, I have, your Honor.

23 THE COURT: Ms. Van Malden?

24 MS. VAN MALDEN: Yes, your Honor.

25 THE COURT: Does your client understand the

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1 rights that will be waived by entering a plea of guilty,
2 Mr. Sheinberg?

3 MR. SHEINBERG: Yes, he does, your Honor.

4 THE COURT: Ms. Van Malden?

5 MS. VAN MALDEN: Yes, she does.

6 THE COURT: Is your capable of understanding
7 the nature of this proceeding, Mr. Sheinberg?

8 MR. SHEINBERG: Yes, he is, your Honor.

9 THE COURT: Ms. Van Malden?

10 MS. VAN MALDEN: Yes, she is.

11 THE COURT: Do you have any doubt about your
12 client's competence to enter a guilty plea at this time,
13 Mr. Sheinberg?

14 MR. SHEINBERG: No, Judge.

15 THE COURT: Ms. Van Malden?

16 MS. VAN MALDEN: Not at all.

17 THE COURT: Have you advised your client of the
18 maximum, and any minimum sentence and fine that might be
19 imposed, also alerted your client to the collateral
20 consequences of the conviction, and the forfeiture
21 judgment aspects of the conviction, and alerted him or
22 her in particular, to the likelihood of removal?

23 Mr. Sheinberg?

24 MR. SHEINBERG: Yes, I have, your Honor, and I
25 believe Mr. Xia is a United States citizen.

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1 THE COURT: Ms. Van Malden?

2 MS. VAN MALDEN: I have spoken with Ms. Gao
3 about all of these issues because she is only a green
4 card holder.

5 THE COURT: Thank you.

6 Mr. Xia, have you had enough time to go over
7 your case very carefully with your attorney?

8 DEFENDANT XIA: Yes, I have.

9 THE COURT: Ms. Gao?

10 DEFENDANT GAO: Yes.

11 THE COURT: Do you understand that if you could
12 no longer afford your lawyer's fees, and you demonstrated
13 that to me, I would appoint an experienced criminal
14 defense attorney to defend you at no cost to you, and you
15 should not plead guilty because you think you can't
16 afford the fees for a trial.

17 Mr. Xia, is that clear to you?

18 DEFENDANT XIA: I do.

19 THE COURT: Ms. Gao?

20 DEFENDANT GAO: Yes.

21 THE COURT: Mr. Xia, are you satisfied to have
22 Mr. Sheinberg be the attorney who is defending you in
23 this case?

24 DEFENDANT XIA: Very well, and I am very
25 satisfied.

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1 THE COURT: Ms. Gao, same question to you with
2 Ms. Van Malden?

3 DEFENDANT GAO: She is very good, and very
4 nice.

5 THE COURT: And you want her to be your lawyer?

6 DEFENDANT GAO: Yes.

7 THE COURT: Have you received a copy of the
8 indictment where the charges against you are set forth in
9 writing and reviewed that indictment in Mandarin with
10 your lawyer?

11 Mr. Xia?

12 DEFENDANT XIA: Yes.

13 THE COURT: Ms. Gao?

14 DEFENDANT GAO: Yes.

15 THE COURT: The indictment accuses you in Count
16 1 of conspiring or agreeing to work together with others,
17 to traffic or buy and sell goods that are counterfeit
18 including handbags, wallets, and belts that have
19 counterfeit trademarks on them.

20 Do you understand what you're accused of in
21 Count 1?

22 Mr. Xia?

23 DEFENDANT XIA: Yes.

24 THE COURT: Ms. Gao? Yes? I want you to
25 answer out loud --

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1 DEFENDANT GAO: Yes.

2 THE COURT: -- because we're making a
3 recording.

4 You have a right to plead not guilty to the
5 charges pending against you in the indictment, and to
6 persist in any not guilty pleas you have previously
7 entered. You have that right even if you committed the
8 crimes listed in the indictment. Every defendant, guilty
9 or not, has the right to enter a not guilty plea, and
10 thereby exercise his or her constitutional right to a
11 trial. It's never lying or misleading to plead not
12 guilty.

13 Do you understand me, Mr. Xia?

14 DEFENDANT XIA: Yes.

15 THE COURT: Ms. Gao?

16 DEFENDANT GAO: Yes.

17 THE COURT: If you were to plead not guilty, or
18 stand on any not guilty pleas you have previously made,
19 then under the Constitution and laws of the United
20 States, you are entitled to a speedy and public trial by
21 a jury with the assistance of your attorney, not only at
22 the trial, but at all stages of the case, and not only
23 with respect to Count 1, but with respect to all of the
24 pending charges.

25 Do you understand, Mr. Xia?

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1 DEFENDANT XIA: Understand.

2 THE COURT: Ms. Gao?

3 DEFENDANT GAO: Yes.

4 THE COURT: At your trial, you would be
5 presumed to be innocent. The prosecution would be
6 required to overcome the presumption of innocence, and to
7 prove that you were guilty by competent evidence, and
8 beyond a reasonable doubt. You would not have to prove
9 that you were innocent.

10 If the prosecution failed to prove you guilty
11 beyond a reasonable doubt, the members of the jury would
12 have the duty to return a not guilty verdict, and Judge
13 Cogan would instruct them accordingly.

14 Do you understand me, Mr. Xia?

15 DEFENDANT XIA: Yes.

16 THE COURT: Ms. Gao?

17 DEFENDANT GAO: Yes.

18 THE COURT: That's why juries sometimes return
19 verdicts of not guilty, even though the members of the
20 jury believe the defendant on trial probably committed
21 the crimes in the indictment. Probably is not enough for
22 a conviction.

23 When a jury returns a not guilty verdict, it
24 does not necessarily mean that jurors believe the
25 defendant is innocent. Jurors are obligated to return a

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1 not guilty verdict unless each juror is convinced beyond
2 a reasonable doubt that the defendant is guilty.

3 Do you understand, Mr. Xia?

4 DEFENDANT XIA: Yes.

5 THE COURT: Ms. Gao?

6 DEFENDANT GAO: Yes.

7 THE COURT: If you proceeded to trial, then
8 during your trial, the prosecutor's witnesses would have
9 to come into the courtroom, and present their testimony
10 against you right in front of you and your lawyer.

11 Your lawyer would have the right to question
12 prosecution's witnesses on cross-examination. Your
13 lawyer would have the right to raise objections to the
14 evidence the prosecution attempted to offer against you.
15 And you and your lawyer working together, would have the
16 right present evidence, including testimony or documents,
17 or physical things in your defense, and to make arguments
18 to the jury in your defense during the trial.

19 You could even issue subpoenas, which are like
20 court orders, compelling people to come to court, and
21 testify, if there were people you wanted to have called
22 as witnesses in your defense.

23 Is all of that clear to you?

24 Mr. Xia?

25 DEFENDANT XIA: Yes.

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1 THE COURT: Ms. Gao?

2 DEFENDANT GAO: Yes.

3 THE COURT: At your trial, you yourself would
4 have the right to testify as a witness in your own
5 defense if you made the choice to do so. On the other
6 hand though, no one could require you to testify your
7 trial, if you preferred to remain silent.

8 That's because the Constitution of the United
9 States says that no one may be required to say anything
10 that is self-incriminating. If you made the decision
11 that you preferred not to be a witness in your own
12 defense at trial, Judge Cogan would instruct the members
13 of the jury that they could not take your silence into
14 account, or hold it against you in any way when they
15 deliberation what their verdict should be.

16 Do you understand me?

17 Mr. Xia?

18 DEFENDANT XIA: Yes.

19 THE COURT: Ms. Gao?

20 DEFENDANT GAO: Yes.

21 DEFENDANT XIA: Yes.

22 THE COURT: On the other hand, if you enter a
23 guilty plea, and Judge Cogan accepts your guilty plea,
24 you will as a result be surrendering your Constitutional
25 right to trial, and all of the other rights that I've

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1 been telling you about today.

2 There will be no further trial of any kind in
3 your case. You will have no right to appeal from the
4 judgment of guilt that will be entered against you.

5 Judge Cogan will essentially convict you based
6 upon your admission of guilt in my courtroom this
7 afternoon, and that will free the prosecution of any
8 responsibility to prove what you did.

9 Do you understand, Mr. Xia?

10 DEFENDANT XIA: I do.

11 THE COURT: Ms. Gao?

12 DEFENDANT GAO: Yes.

13 THE COURT: If you proceeded to trial and you
14 were convicted by a jury's verdict, you would then have a
15 right to ask a higher court to review the legality of all
16 of the proceedings that led up to your conviction.

17 But when you plead guilty, you are substituting
18 your own words, admitting your guilt, for a jury finding.
19 When you do that, you give up your right to take an
20 appeal that challenges your conviction.

21 Do you understand me?

22 Mr. Xia?

23 DEFENDANT XIA: Yes.

24 THE COURT: Ms. Gao?

25 DEFENDANT GAO: Yes.

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1 THE COURT: If you plead guilty, I will have to
2 to ask you questions about what you did with respect to
3 counterfeiting, so that Judge Cogan and I can be
4 satisfied that your guilty pleas are based upon facts
5 that actually took place.

6 You don't have to answer those kinds of
7 questions unless you want to go forward with your guilty
8 plea, but if you do answer them, and you admit that you
9 were involved in counterfeiting, you will be surrendering
10 your right not to incriminate yourself.

11 Do you understand me, Mr. Xia?

12 DEFENDANT XIA: Yes.

13 THE COURT: Ms. Gao?

14 DEFENDANT GAO: Yes.

15 THE COURT: Do you still wish to give up your
16 right to trial and all of the other rights I've been
17 describing to you?

18 Mr. Xia?

19 DEFENDANT XIA: Yes, I will plead guilty.

20 THE COURT: Ms. Gao?

21 DEFENDANT GAO: Yes.

22 THE COURT: Yes?

23 DEFENDANT GAO: Yes.

24 THE COURT: I understand you're making this
25 decision pursuant to written plea agreements marked a

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1 Government Exhibit 1 with respect to Ms. Gao, and 2 with
2 respect to Mr. Xia.

3 I will ask my clerk to deliver those to your
4 counsel table now.

5 Directing your attention to Government Exhibit
6 1, Ms. Gao, and yours to Government Exhibit 2, Mr. Xia,
7 do you recognize these documents, and does your signature
8 appear on the final page, Ms. Gao?

9 DEFENDANT GAO: Yes.

10 THE COURT: Mr. Xia?

11 DEFENDANT XIA: Yes.

12 THE COURT: Before you signed this document,
13 was it reviewed with you carefully by your attorney in
14 Mandarin?

15 Mr. Xia?

16 DEFENDANT XIA: Yes.

17 THE COURT: Ms. Gao?

18 DEFENDANT GAO: Yes.

19 THE COURT: Did you understand the document
20 thoroughly before you signed it?

21 Mr. Xia?

22 DEFENDANT XIA: Yes.

23 THE COURT: Ms. Gao?

24 DEFENDANT GAO: Yes.

25 THE COURT: Does that document contain a

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1 complete statement of everything that you and the
2 prosecution have agreed to regarding your case?

3 Mr. Xia?

4 DEFENDANT XIA: Yes.

5 THE COURT: Ms. Gao?

6 DEFENDANT GAO: Yes.

7 THE COURT: Has anyone promised you anything in
8 return for pleading guilty that is not written down in
9 your agreement?

10 Mr. Xia?

11 DEFENDANT XIA: No.

12 THE COURT: Ms. Gao?

13 DEFENDANT GAO: No.

14 THE COURT: May we have the agreements back,
15 please?

16 As I've said before, your agreements say that
17 you wish to plead guilty to Count 1, which is the
18 conspiracy or agreement to work together to traffic in
19 counterfeit merchandise.

20 Do you have the charge clear in your mind?

21 Mr. Xia?

22 DEFENDANT XIA: Your Honor, can we ask the
23 lawyer a privately for a moment?

24 THE COURT: Oh, yes, absolutely.

25 (Counsel and client confer)

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1 MR. SHEINBERG: We're good, Judge.

2 THE COURT: Ms. Gao, did you have a chance to
3 have your question answered by your lawyer?

4 DEFENDANT GAO: Yes.

5 THE COURT: In Count 1, you're charged with
6 conspiring or working together to be involved with the
7 distribution of counterfeit merchandise.

8 Do you have the charge against you clear in
9 your mind?

10 Mr. Xia?

11 DEFENDANT XIA: Yes.

12 THE COURT: Ms. Gao?

13 DEFENDANT GAO: Yes.

14 THE COURT: I want to review with you the
15 penalties you face if you are convicted of this charge.
16 The law you're accused of violating authorizes Judge
17 Cogan to impose a prison sentence that could be as long
18 as ten years.

19 Do you understand, Mr. Xia?

20 DEFENDANT XIA: Yes.

21 THE COURT: Ms. Gao?

22 DEFENDANT GAO: Yes.

23 THE COURT: In addition, the law authorizes
24 Judge Cogan to impose a term of supervised release that
25 could be as long as three years.

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1 Do you understand me, Mr. Xia?

2 DEFENDANT XIA: Yes.

3 THE COURT: Ms. Gao?

4 DEFENDANT XIA: Yes.

5 THE COURT: Supervised release is a time period
6 of up to three years, that won't even begin until you've
7 finished serving any sentence of imprisonment that is
8 imposed in your case.

9 Once you finish that prison sentence, you'll be
10 released from physical custody, but you will be subject
11 to the rules of supervised release for up to three years.
12 There are so many of those rules, I can't list them all
13 for you today. They will include restrictions on your
14 right to travel freely, and requirements that you
15 regularly report to a probation officer, follow the
16 officer's instructions, answer the officer's questions,
17 and commit no new crimes at all.

18 And if you violate the terms of supervised
19 release rule, whether you've committed a new crime or
20 not, you could be arrested, brought back to this court,
21 and sent back to prison for up to two more years on this
22 counterfeiting conspiracy charge. You would get no
23 credit for the time you spent serving your prison
24 sentence or with your liberty restricted by supervised
25 release against this new two-year term.

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1 Is that clear, Mr. Xia?

2 DEFENDANT XIA: Yes.

3 THE COURT: Ms. Gao?

4 DEFENDANT GAO: Yes.

5 THE COURT: You could be fined as much as \$2

6 million.

7 Is that clear, Mr. Xia?

8 DEFENDANT XIA: Yes.

9 THE COURT: Ms. Gao?

10 DEFENDANT GAO: Yes.

11 THE COURT: You could be required or will be

12 required to make restitution or pay the victims the

13 amounts they've lost.

14 Is that clear, Mr. Xia?

15 DEFENDANT XIA: Uh-hum.

16 THE COURT: Ms. Gao?

17 DEFENDANT GAO: Yes.

18 THE COURT: Mr. Xia

19 DEFENDANT XIA: Yes.

20 THE COURT: A \$100 special assessment will be

21 imposed against you at or about the time you are

22 sentenced.

23 Is that clear, Mr. Xia?

24 DEFENDANT XIA: Yes.

25 THE COURT: Ms. Gao?

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1 DEFENDANT GAO: Yes.

2 THE COURT: You are agreeing in addition to any
3 fine or restitution, to forfeit \$90,000 in currency to
4 the United States government.

5 Is that clear, Mr. Xia?

6 DEFENDANT XIA: Yes.

7 THE COURT: Ms. Gao?

8 DEFENDANT GAO: Yes.

9 THE COURT: A defendant who is not a United
10 States citizen will almost certainly be removed from the
11 United States based upon a conviction of this offense,
12 and Ms. Gao, the government is already of the
13 understanding that you are not a United States citizen.

14 Do you understand me, Ms. Gao?

15 DEFENDANT GAO: Yes, I do.

16 THE COURT: Mr. Xia, do you understand that if
17 it should turn out that you are, in fact, you are not a
18 citizen, you could be removed from the United States?

19 DEFENDANT XIA: Understand.

20 THE COURT: Anything you say in my courtroom
21 today could be used against you in any proceeding that
22 might be held to determine your right to remain in, or
23 ever return to this country.

24 Do you understand me, Ms. Gao?

25 DEFENDANT GAO: Yes.

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1 THE COURT: Mr. Xia?

2 DEFENDANT XIA: Yes.

3 THE COURT: I meant to ask this earlier, Mr.

4 Campos, have victim notification been provided?

5 MR. CAMPOS: It has been provided, your Honor.

6 THE COURT: Thank you.

7 I now would like to turn your attention to what
8 we call the Sentencing Commission Guidelines. These
9 guidelines will be applied by Judge Cogan, and will
10 provide him with a range of months within which the law
11 will suggest an appropriate sentence in your case should
12 be set.

13 Have you had an opportunity to discuss these
14 guidelines carefully with your attorney, and to get your
15 lawyer's advice about how these guidelines are likely to
16 apply in your case?

17 Mr. Xia?

18 DEFENDANT XIA: Yes.

19 THE COURT: Ms. Gao?

20 DEFENDANT GAO: Yes.

21 THE COURT: The prosecution has estimated or
22 predicted that Judge Cogan will calculate your guideline
23 range to be 30 to 37 months long. I'm sure that the
24 prosecution did a careful job making that estimate, but
25 it's not binding on Judge Cogan. Judge Cogan will make

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1 his own calculation of the guidelines range. He won't do
2 that until he receives something called a presentence
3 report, which hasn't even been written yet.

4 Once it's prepared, you and your lawyers will
5 have the opportunity to read it, and then there will be a
6 proceeding before Judge Cogan, at which you may address
7 the Court, and tell the judge if there's anything in the
8 report that you think is wrong.

9 Only then will Judge Cogan calculate the
10 guidelines, and it's possible he will decide upon a
11 longer guidelines range than the one the government has
12 estimated.

13 Do you understand me, Mr. Xia?

14 DEFENDANT XIA: Yes.

15 THE COURT: Ms. Gao?

16 DEFENDANT GAO: Yes.

17 THE COURT: Even after Judge Cogan decides what
18 your guideline range should be, he will have the
19 responsibility to consider additional facts and
20 circumstances about your case before determining his
21 sentence. And he might decide to impose a sentence even
22 longer than the guidelines range he calculates.

23 Do you understand me, Mr. Xia?

24 DEFENDANT XIA: Yes.

25 THE COURT: Ms. Gao?

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1 DEFENDANT GAO: Yes.

2 THE COURT: If you are sentenced to prison for
3 41 months or a shorter period of time, you will have no
4 right to bring any challenge to your guilty plea,
5 conviction, or sentence. Even if you are sentenced to
6 prison for longer than 41 months, you will not be
7 permitted to withdraw your guilty plea or to raise a
8 legal challenge to your conviction on that basis. The
9 only rights you would have in that even would be to
10 challenge the legality of the length of the prison
11 sentence Judge Cogan imposed.

12 Do you understand that, Mr. Xia?

13 DEFENDANT XIA: Yeah.

14 THE COURT: Ms. Gao?

15 DEFENDANT GAO: Yes.

16 THE COURT: You may have heard of parole which
17 is a program of early release from a prison sentence.
18 Parole is a state court program. There is no parole in
19 federal court, so whatever sentence you receive from
20 Judge Cogan, you will not be released early on parole.

21 Do you understand me, Mr. Xia?

22 DEFENDANT XIA: Yes.

23 THE COURT: Ms. Gao?

24 DEFENDANT GAO: Yes.

25 THE COURT: Do you have any questions that you

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1 would like to ask me or privately discuss with your
2 attorneys about the charges, the penalties, your plea
3 agreement, your rights or anything else?

4 Mr. Xia?

5 DEFENDANT XIA: No.

6 THE COURT: Ms. Gao?

7 DEFENDANT GAO: No.

8 THE COURT: Is everything I have said to you
9 today clear?

10 Mr. Xia?

11 DEFENDANT XIA: Yes.

12 THE COURT: Ms. Gao?

13 DEFENDANT GAO: Yes.

14 THE COURT: Mr. Xia, are you ready to enter
15 your plea?

16 DEFENDANT XIA: Yes.

17 THE COURT: Mr. Sheinberg, do you know of any
18 reason why your client should not plead guilty as
19 contemplated by his agreement?

20 MR. SHEINBERG: No, your Honor.

21 THE COURT: Mr. Xia, with respect to Count 1 of
22 the indictment, the conspiracy to traffic in
23 counterfeited merchandise, how do you plead, guilty or
24 not guilty?

25 DEFENDANT XIA: I plead guilty.

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1 THE COURT: Do you make this plea of guilty
2 plea voluntarily and of your own free will?

3 DEFENDANT XIA: Yes.

4 THE COURT: Have you been threatened you or
5 forced you in any way to make this plea of guilty?

6 DEFENDANT XIA: No.

7 THE COURT: Other than what's written in your
8 plea agreement with the prosecution, has anyone promised
9 you anything in return for pleading guilty?

10 DEFENDANT XIA: No.

11 THE COURT: Has anyone promised you what
12 sentence Judge Block (sic) will impose?

13 DEFENDANT XIA: No.

14 THE COURT: Excuse me, Judge Cogan will impose?

15 DEFENDANT XIA: No.

16 THE COURT: Tell me in your own words what you
17 did that makes you guilty of this offense.

18 DEFENDANT XIA: We have shipped goods that have
19 the counterfeit trademark, okay, in the year of 2016.

20 THE COURT: Did some of the -- I'm sorry.

21 MR. SHEINBERG: No, we're okay.

22 THE COURT: Where were the goods shipped from?

23 DEFENDANT XIA: From New York.

24 THE COURT: What part of New York?

25 DEFENDANT XIA: Flushing, Queens.

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1 THE COURT: When you shipped the merchandise,
2 did you know that it had fraudulent or counterfeit
3 trademarks on it?

4 DEFENDANT XIA: Yes, I did.

5 THE COURT: And did you believe that when you
6 were shipping it, that the merchandise would be resold
7 with the appearance that it was manufactured by the
8 people whose trademarks were on it?

9 DEFENDANT XIA: Yes.

10 THE COURT: Would the government have me ask
11 anything further of Mr. Xia?

12 MR. CAMPOS: Just a moment, your Honor.

13 THE COURT: Take your time.

14 MR. CAMPOS: Your Honor, since the defendant is
15 pleading guilty to a conspiracy in traffic in counterfeit
16 goods, we would ask further questions that he worked with
17 others to do this.

18 Additionally, the defendant pleaded guilty --
19 stated in his allocution that he did this during the
20 period of 2016. If the case were to go to trial, the
21 government would prove a longer time period.

22 THE COURT: Thank you.

23 Did you have other people working with you in
24 your efforts to ship these counterfeit goods for
25 redistribution?

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1 DEFENDANT XIA: Yes.

2 THE COURT: Did they also know that the goods
3 were counterfeit when they were shipped, or at least some
4 of them?

5 DEFENDANT XIA: That's correct.

6 THE COURT: Anything further?

7 MR. CAMPOS: Not from the government, your
8 Honor.

9 THE COURT: You may be seated.

10 MR. CAMPOS: Thank you, your Honor.

11 THE COURT: Based on the information given to
12 me, I find that the defendant Xia is acting voluntarily,
13 that he fully understands his rights and the consequences
14 of his plea and that his plea has a factual basis. I
15 therefore recommend that Judge Cogan accept the
16 defendant's plea of guilty to Count 1 of indictment 18-
17 cr-408.

18 Mr. Xia, I understand sentencing has been
19 scheduled in your case for December 5th at 10 a.m.

20 Between now and then, you will be interviewed
21 by a probation officer. The reason for the interview
22 will be to help the officer prepare the report that Judge
23 Cogan will rely upon when deciding what your sentence
24 should be. I urge that you be candid and cooperative
25 during the interview, so that the report can be complete

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1 and accurate as possible.

2 DEFENDANT XIA: Okay.

3 THE COURT: I take it that Mr. Xia has
4 previously appeared before the Court, that bond, pre-
5 trial release conditions have been set, and that there's
6 no objection to them being continued.

7 MR. CAMPOS: There is no objection from the
8 government, your Honor.

9 MR. SHEINBERG: Thank you.

10 THE COURT: Thank you. You're excused but if
11 you wish to remain seated, you may.

12 MR. SHEINBERG: We will wait till --

13 THE COURT: Okay.

14 Ms. Gao, are you ready to enter your plea?

15 DEFENDANT GAO: Yes.

16 THE COURT: Ms. Van Malden, do you know of any
17 reason why your client should not enter the plea of
18 guilty contemplated by her agreement?

19 MS. VAN MALDEN: I do not.

20 DEFENDANT GAO: Ms. Gao, with respect to Count
21 1 in which you're charged with conspiring to traffic in
22 or be involved in the commercial distribution of
23 counterfeit goods, how do you plead, guilty or not
24 guilty?

25 DEFENDANT GAO: I plead guilty.

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1 THE COURT: Are you making this plea of guilty
2 voluntarily and of your own free will?

3 DEFENDANT GAO: Yes.

4 THE COURT: Have you been threatened or forced
5 by anyone to plead guilty?

6 DEFENDANT GAO: No.

7 THE COURT: Other than what is written in your
8 plea agreement with the prosecution, has anyone promised
9 you anything in return for your plea of guilty?

10 DEFENDANT GAO: No.

11 THE COURT: Has anyone promised you what
12 sentence Judge Cogan will impose?

13 DEFENDANT GAO: No.

14 THE COURT: Please tell me in your own words
15 what makes you guilty of this charge.

16 DEFENDANT GAO: I shipped goods that have
17 counterfeit trademarks.

18 THE COURT: When you were involved in shipping
19 the goods, did you know that the trademarks on them were
20 counterfeit?

21 DEFENDANT GAO: I was aware of it.

22 THE COURT: Were you in Flushing, Queens, when
23 you were involved in these shipments?

24 DEFENDANT GAO: Yes.

25 THE COURT: Did you understand that when you

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1 were shipping the goods they would be resold to consumers
2 with the hope that the consumers would believe that they
3 were actually manufactured by the companies whose
4 trademarks appeared to be on them?

5 DEFENDANT GAO: Yes.

6 THE COURT: Did you work together with other
7 people at the Flushing facility who were also involved in
8 shipping the counterfeit goods?

9 DEFENDANT GAO: Yes.

10 THE COURT: And was it your understanding that
11 at least some of those other people also knew that these
12 were counterfeit pieces of merchandise?

13 DEFENDANT GAO: Yes.

14 THE COURT: Is there anything further the
15 government -- oh, over what period of time did this take
16 place, as you recall, Ms. Gao? What is your recollection
17 the time period over which this took place?

18 DEFENDANT GAO: In the year 2015.

19 THE COURT: Would the government prefer to
20 amplify or inquire further?

21 MR. CAMPOS: Your Honor, if that's the
22 defendant's plea that is covered during the period of the
23 indictment. If the case were to go to trial, the
24 government would prove that it was for a longer period of
25 time.

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1 THE COURT: Based on the information that has
2 been presented to me, I find that the defendant is acting
3 voluntarily, that she fully understands her rights and
4 the consequences of her guilty plea. I further find her
5 plea has a factual basis. I therefore recommend that
6 Judge Cogan accept the defendant Gao's plea of guilty to
7 Count 1 of 18-cr-408.

8 Sentencing of Ms. Gao has been scheduled in
9 your case for December 4th at 10 a.m.

10 Between now and that date, Ms. Gao, you will be
11 interviewed by a probation officer, who will be preparing
12 the report that Judge Cogan reviews to decide your
13 sentence. So I urge that you be candid and cooperative
14 with the officer, so the report can be as complete and
15 accurate as possible.

16 I take it Ms. Gao likewise has previously
17 appeared before the Court, that there are pre-trial
18 release conditions, and that there's no objection to them
19 being continued, Mr. Campos?

20 MR. CAMPOS: The government has no objection
21 to that, your Honor.

22 THE COURT: Is there anything further from
23 anybody?

24 MS. VAN MALDEN: Not from the defense, your
25 Honor.

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1 MR. SHEINBERG: No, your Honor.

2 THE COURT: Have a great afternoon.

3 MR. CAMPOS: Not from the government.

4 THE COURT: Thank you, everyone.

5 MS. VAN MALDEN: Thank you. You, too.

6 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 2nd day of October, 2019.



Linda Ferrara

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